

REMARKS/ARGUMENTS

Please cancel claims 7-14 and 20-25 without prejudice to filing in a divisional or continuing application.

Please add new claims 26-59 directed at devices and their associated methods. As can be seen for the following claims, the present invention is directed to devices useful for removing, or reducing the concentration of, metals in substrates including water, soil, body fluids and other environmental sources. The methods are inseparable from the device and therefore no meaningful prior art search (regardless of the arbitrary patent class designation) can be conducted for one aspect of the invention without fully considering the other. It is well known that other devices are used, albeit with limited efficacy, for removing metals from substrates. Hence, claiming a generic metal removal device and associated methods (as inadvertently done in original claim 24) would result in so many arbitrary patent office classes as to make a restriction requirement necessary in order to efficiently search the prior art. However, in the present case, new claim 25 is only directed to devices (and associated methods) using metallothionein (MT) proteins as the devices' metal chelator (metal binding site). Thus, the Examiner's required search scope is much more limited than originally suggested by claim 24. Therefore, the Applicants respectfully assert that the present search presents no undue burden and that efficiency and argues in favor of combining groups I and II.

Moreover, the Applicants assert that the device as presently claimed is not useful in a "materially different process" as the Examiner has stated. Thus MPEP §806.05 (e) does not apply. The device, an MT protein-containing support made in accordance with the teachings of the present invention, and a presently claimed, would only be useful for removing metals (toxic, inert or precious) from substrates containing such metals. There is no other "materially different process." The Applicants assert that the Examiner's example of a materially different process "dialysis" is in fact NOT materially different than removing a metal (for example lead or mercury) from water, soil etc. The process involves contacting a substrate containing a metal to be removed with a MT

protein-containing support such that the metal is removed from the substrate. Whether the substrate is a slurry (soil in solvent or blood, for example) or a liquid (water or serum for example) the process is essentially the same. The novelty lies predominately in using MT proteins as the metal binder to remove metals therefrom. Filtration, dialysis, chromatography, etc. are but mere examples of essentially the same process using the same novel and inventive concept, the MT-protein (see for examples paragraph 0049 of the present application).

In conclusion, the Applicants have provisionally elected Group II directed at devices but have argued in favor of rejoining the method and device claims for the reasons provided *supra*. Should the Examiner not find the Applicants' traversal persuasive, the Applicants will respectfully ask that any claims canceled by the Examiner be rejoined at the conclusion of the successful prosecution of the elected group.

In view of the Examiner's election/restriction requirement, application retains the right to present claims 7-14 and 20-25 in a divisional application.

Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

The Commissioner is authorized to charge any fee which may be required in connection with this Amendment to deposit account No. 50-3207.

Respectfully submitted,

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